

3743
jpw

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

PATENT
Attorney Docket No.: 020017-000110US

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

On March 14, 2005

TOWNSEND and TOWNSEND and CREW LLP

By: JoAnn Evangelista
JoAnn Evangelista

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

NED S. RASOR et al.

Application No.: 09/614,389

Filed: July 12, 2000

For: METHODS AND APPARATUS
FOR RELIEVING HEADACHES,
RHINITIS AND OTHER
COMMON AILMENTS

Customer No.: 20350

Confirmation No. 1930

Examiner: HENRY A. BENNETT

Technology Center/Art Unit: 3743

RESPONSE UNDER 37 CFR §1.111

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed January 27, 2005, reconsideration of the rejections stated in the Office Action is requested in view of the following remarks.

Applicants thank Examiner Bennett for the helpful and courteous telephone interview on March 2, 2005. In the telephone interview, Applicants' undersigned representative pointed out certain inconsistencies in the rejections stated in the Office Action mailed on January 27, 2005. In particular, the inconsistencies are as follows:

1. The rejections stated in the Office Action mailed on December 12, 2002, were to the claims as amended in a Preliminary Amendment mailed on September 4, 2001, and

Appl. No. 09/614,389
Amdt. dated March 14, 2005
Response Under 37 CFR 1.111

PATENT

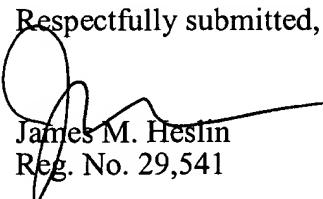
corrected on October 24, 2001. These claims were substantively amended on three occasions since September 10, 2002, including amendments mailed on September 8, 2003; October 30, 2003; and finally on October 15, 2004. As the claims have been substantially amended since September 4, 2002, Applicants believe that the rejections stated in the original Office Action cannot be applied to the claims as presently amended.

2. Applicants further note that Examiner Bennett, in an Office Action mailed on April 6, 2004, allowed claims 16-18, 20, 21, and 24-27, objecting to a number of additional claims, and rejecting only claims 1, 10-12, and 14. The Office Action mailed on January 27, 2005, offers no explanation as to why the allowed and objected to claims are now being rejected.

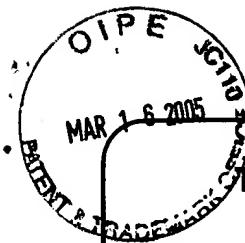
3. It is further noted that the amendments filed on October 15, 2004, should have placed all claims in condition for allowance since they removed "oxygen" from the list of therapeutic gases and all therapeutic method claims where the patient would continue breathing. Such amendments overcame the grounds for rejection stated in the prior Office Action.

In the above-noted telephone conference, Examiner Bennett agreed to reconsider the objections made in the Office Action mailed January 27, 2005, in view of the amendments and arguments made between the Office Action mailed on September 12, 2002, and the present time.

If for any reason the Examiner believes that a telephone conference would in any way expedite prosecution of the subject application, the Examiner is invited to telephone the undersigned at (650) 326-2400.

Respectfully submitted,

James M. Heslin
Reg. No. 29,541

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 650-326-2400 / Fax: 415-576-0300
JMH:jis / 60439457 v1



TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

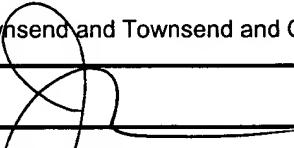
Total Number of Pages in This Submission

Application Number	09/614,389
Filing Date	July 12, 2000
First Named Inventor	RASOR, NED S.
Art Unit	3743
Examiner Name	HENRY A. BENNETT
Total Number of Pages in This Submission	4
Attorney Docket Number	020017-000110US

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC		
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences		
<input checked="" type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)		
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information		
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter		
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):		
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	<input type="checkbox"/> Return Postcard		
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____			
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> Landscape Table on CD			
<input type="checkbox"/> Reply to Missing Parts/ Incomplete Application				
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53				
<table border="1"> <tr> <td>Remarks</td> <td>The Commissioner is authorized to charge any additional fees to Deposit Account 20-1430.</td> </tr> </table>			Remarks	The Commissioner is authorized to charge any additional fees to Deposit Account 20-1430.
Remarks	The Commissioner is authorized to charge any additional fees to Deposit Account 20-1430.			

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Townsend and Townsend and Crew LLP		
Signature			
Printed name	James M. Heslin		
Date	March 14, 2005	Reg. No.	29,541

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Signature			
Typed or printed name	JoAnn Evangelista	Date	March 14, 2005